MONTANA ADMINISTRATIVE REGISTER

2024 ISSUE NO. 23
DECEMBER 6, 2024
PAGES 2548-2562

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Adoption Notice Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Other Notice Section contains Attorney General's opinions, state declaratory rulings, and other special notices.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.5.2202 and 38.5.2302 pertaining to pipeline safety	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on January 3, 2025, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~November 17, 2023~~ November 22, 2024. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~November 17, 2023~~ November 22, 2024. A copy of the referenced CFRs is available from the United States Department of Transportation,

Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

REASON: The proposed amendment of ARM 38.5.2202 and 38.5.2302 is necessary to allow the department to use the most recent version of federal rules applicable to Montana's pipeline safety programs. Regular amendments of these rules are also necessary to remain in compliance with federal funding requirements. The referenced regulations may be reviewed at the department's offices.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (800) 646-6150; fax (406) 444-7618; or e-mail pschelp@mt.gov. Comments must be received no later than 5:00 p.m. on January 3, 2025. Please reference Docket No. 2024.11.111 when submitting a comment. All comments received by the department are public records. Please do not include confidential or private information in comments.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, no later than 5:00 p.m. on January 3, 2025.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be two entities based on 20 affected entities.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program(s) the person wishes to receive notices. The department's programs

are: electric utilities, providers and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the department at the contact information listed in paragraph 2 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ *Amanda S. Webster*
Amanda S. Webster
Rule Reviewer

/s/ *James Brown*
James Brown
President
Public Service Commission

Certified to the Secretary of State November 26, 2024.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Cornell Park Fishing Access Site in Beaverhead County	))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) From November 24, 2024, through November 30, 2024, the parking lot and picnic area will be closed due to construction activities at the fishing access site, although the construction might last longer. These activities will also necessitate closure of the boat ramp as vehicles will not be able to access the ramp through the closed parking lot. Department personnel will post signage when the site is closed and shall provide notice to the public when it is safe to begin using the site again.

(b) In order to protect the public from any injuries resulting from the rebuilding and construction, Cornell Park Fishing Access Site is closed to all recreational use except for the shoreline of the river for wade angling if accessed from the river itself.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the partial closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 23 of the 2024 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 6, 2024, to advise us of the nature of the accommodation that you need. Please contact Audrey Kelly, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 594-8073; or e-mail Audrey.Kelly@mt.gov.

3. The emergency rule is effective November 21, 2024, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I EMERGENCY CLOSURE OF THE CORNELL PARK FISHING ACCESS SITE (1) The Cornell Park Fishing Access Site is located in Beaverhead County.

(2) The Cornell Park Fishing Access Site is closed to all watercraft use.

(3) This rule will expire as soon as the department determines the construction is complete and no longer presents a risk to public health and safety. Signs closing the Cornell Park Fishing Access Site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail audrey.kelly@mt.gov. Any comments must be received no later than December 23, 2024.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on November 21, 2024.

/s/ Quentin Kujala
Quentin Kujala
Chief of Conservation Policy
Department of Fish, Wildlife and Parks

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

Certified to the Secretary of State November 21, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.681 pertaining to agricultural commodity prices and values	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 18, 2024, the Department of Revenue published MAR Notice No. 42-1087 pertaining to the proposed amendment of the above-stated rule at page 2413 of the 2024 Montana Administrative Register, Issue Number 20.

2. No requests for a public hearing were received. The department did not receive any written comments in support of or opposition to the proposed amendment.

3. The department has amended ARM 42.20.681 as proposed with an effective date of January 1, 2025.

4. With regard to the requirements of 2-4-305(11), MCA, this rulemaking meets one or more of the exceptions provided in (11)(b)(ii) because the commodities data that the department receives from the United States Department of Agriculture National Agricultural Statistics Service, which is used to update the commodity prices and values in the rule, is unavailable until the third calendar quarter of any year.

/s/ Todd Olson	/s/ Brendan Beatty
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State November 26, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. This list includes notices in which those rules adopted during the period June 7 through November 22, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This list does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2024, this list, and the table of contents of this issue of the Register.

This list indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2024 Montana Administrative Register.

To aid the user, this list includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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